Prologue to Impeachment: 
The Case of Don Joseph Cabrera

The story of the attempt by the Pennsylvania Assembly to impeach and remove Governor Thomas McKean in December 1808 is a familiar one. So, too, is that of William Duane's Aurora in promoting and orchestrating the final political strategems against the embattled Governor. But little attention has been paid to the case of Don Joseph Cabrera, a prime catalyst in Duane's determination to truncate McKean's public career. If the legal community in Philadelphia was drawn to the Cabrera matter because of questions it raised regarding the "law of nations," Duane's preoccupation with it went well beyond that narrow concern. In the political and legal circumstances surrounding the Spaniard's arrest and incarceration Duane glimpsed most of the themes that later constituted the basis for his impeachment campaign against McKean. Not only did the Cabrera affair identify for Duane arbitrary and illegal conduct on the part of the Governor and members of his family, but he recognized in it an excellent vehicle by which to draw public attention to "unrepublican" manifestations, epitomized by McKean, then besetting Pennsylvania society.

The case began innocuously enough. During the summer of 1804 two checks in the name of the Spanish Minister to the United


Part of the research for this article was conducted under a grant from the University of Northern Colorado Research and Publication Committee. The author wishes to thank Professors Alexander Knott and Charles Meyer for their help.
States, the Marquis Casa de Yrujo—one for $600, a second for $1,000—were cashed at the Bank of Pennsylvania. Yrujo denied authorizing the checks and alerted bank officials to watch for future illegal withdrawals. On August 24, Charles Lange, a black man, was arrested while attempting to cash a check for $300 bearing Yrujo’s signature. Lange quickly confessed that he had been pressured into the illegal acts by his master, Yrujo’s secretary Don Joseph Cabrera.²

The president of the bank, Samuel M. Fox, was perplexed as to what steps against Cabrera were feasible in light of his diplomatic position. Suspecting that Cabrera might be protected by “the law of nations” and fearful lest his bank offend a foreign government, Fox urged Governor Thomas McKean to use his influence with Yrujo, who was McKean’s son-in-law, to impress upon Cabrera the wisdom of “surrender[ing] up” and agreeing to be legally prosecuted in the state courts. Fox was confident McKean could “direct such measures as shall appear to you consonant to justice, and the privileges of those attached to a foreign embassy.”³

That same day (August 24) McKean advised Yrujo of the bank’s wishes. He emphasized that “the government and citizens of Pennsylvania have at all times evidenced a sacred regard to the law of nations (which is a part of the law of state law) ... and to the ... inviolability of foreign ministers, their domicils and those of their train.” But McKean thought “under all the circumstances of this case” Yrujo would judge it “just and proper to withdraw your protection from a person thus charged with an offense so immoral. ...” The Governor formally requested that Yrujo submit Cabrera “to the laws and justice of this state,” remarking that Cabrera’s punishment, should he be convicted by a Pennsylvania court, would “be very mild, compared with that he would undergo in his own country.”

² Poulson’s American Daily Advertiser, Apr. 23, 1805. Accounts also appeared in Relf’s Philadelphia Gazette, Apr. 24, 1805, and the United States Gazette, Apr. 23, 1805, both based heavily upon Poulson’s report. Cabrera’s version of these developments can be found in “Détail circonstancie des soupçons contre moi,” dated Oct. 2, 1804, in Notes from the Spanish Legation in the United States to the Dept. of State, 1790–1906, II, National Archives Microfilm 59, roll 3.

³ Samuel M. Fox to Thomas McKean, Aug. 24, 1804, Relf’s Philadelphia Gazette, May 22, 1805.
Yrujo refused to be pressured into turning his secretary over to Pennsylvania authorities. He conceded that a perusal of the evidence convinced him there was “very little favorable to the honour and good name of . . . Cabrera,” and that his first impulse was to deliver the “culprit into the hands of justice.” A more sober assessment of the situation, however, persuaded him that he could not take it upon himself to strip Cabrera of his diplomatic immunity, an immunity implicit in his appointment by the King. “I do not believe myself authorized to take from him, what he has not received from me,” he explained to McKean. They must therefore await the King’s judgment. In the meantime, Yrujo informed the Governor, Cabrera would be “detained according to my ideas, by my direction and orders.”

Only hours after McKean heard from Yrujo, he informed Sheriff John Barker that the Spanish Minister wished to have Cabrera incarcerated in a debtor’s apartment in the Philadelphia jail. The Governor took the occasion to review for Barker the intricacies of international law respecting this matter. Barker was told: “By the law of nations, Don Jos. De Cabrera is entitled to all the immunities appertaining to one of the train of the envoy extraordinary and minister plenipotentiary of his catholic majesty.” Though Cabrera might not “be amenable to our laws and tribunals, yet he may be secured with the consent of the minister of Spain” until such time as the king formally made his wishes in the matter known.

On the same day Yrujo notified Cabrera that, “after consulting many people and books about the law of nations,” he had agreed “to give [him] over to the common justice of Pennsylvania.” Such a step, Cabrera was told, was “not only proper, but just and conformable to the general practice, according to the most accredited publicists.” Exactly what Yrujo meant by giving Cabrera over to the common justice of Pennsylvania is not clear. Initially he informed Cabrera that he had withdrawn his protection from him; later he advised him “voluntarily” to “leave his immunity” and proceed to the debtor’s apartment set aside for him and await the King’s disposition of his fate. Yrujo assured Cabrera that the apartment provided him would be suitable for someone of his rank. Nor

4 Thomas McKean to Casa de Yrujo, Aug. 24, 1804; Yrujo to McKean, Aug. 27, 1804, ibid.
5 Thomas McKean to John Barker, Aug. 27, 1804, Aurora, Apr. 26, 1805.
should Cabrera worry about state authorities taking him by force; they would merely “oversee” his “arrest” and confinement. Yrujo admonished his aide, however, that should he refuse to submit voluntarily, Yrujo would withdraw “all immunities and leave him to the local courts.”

When this missive reached the Spanish secretary he was already unhappily ensconsed in a debtor apartment shared by three other prisoners. Not only was he dismayed by the discrepancies between what Yrujo promised and what Barker had arranged, but a single night in jail had convinced him that he wanted no part of any arrangements which necessitated his prolonged occupancy there. He asserted his innocence, insisting that the real villain was a Frenchman who had subsequently left the city. Cabrera’s plea to be confined in his own home, under house arrest, until his innocence could be established by the Frenchman’s capture was studiously ignored by Yrujo and state officials.

The arrest of a Frenchman in Wilmington, Delaware, on August 30 satisfied Yrujo that Cabrera’s alibi was false and that he must take his chances in Pennsylvania courts. Yrujo informed his secretary that either he submit himself to Pennsylvania justice or face up “to five months confinement” in the debtor’s apartment. This ultimatum was prompted in part by the Minister’s conviction that Cabrera now had “all and every means of defense in [his] own hands,” and in part by pressure from McKean. Accordingly, in the first week of September Cabrera waived his remaining immunity in favor of a speedy trial. When his request to stand before a local court was passed on to McKean by Yrujo, the Governor ordered his son, Attorney General Joseph Borden McKean, to initiate proceedings in the Mayor’s Court, a move which led to Cabrera’s indictment on three counts of forgery. Bail was set at $2,000.

This sum, Cabrera insisted, was well beyond his means, and he

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6 Yrujo to Don Joseph Cabrera, Aug. 27, 1804, Aurora, Apr. 29, 1805. See also the letter to Cabrera of August 31 (ibid.) wherein Yrujo tells Cabrera that Cabrera’s “rights and privileges remain unblemished.”

7 Cabrera to Yrujo, Aug. 31, 1804, Aurora, Apr. 29, 1805. McKean had written Barker that the sheriff should provide Cabrera a room to himself “when a whole room can be spared.”

8 Yrujo to McKeane, Aug. 27, Oct. 31, 1804; Apr. 16, 1805, Relf’s Philadelphia Gazette, May 22, 23, 1805. The Frenchman was judged to be innocent of any wrongdoing and was released. He later testified at Cabrera’s trial.
speedily retracted his agreement and demanded to be tried in a Spanish court. Therefore, on October 26 Yrujo asked McKean if he could “reclaim” diplomatic immunity for Cabrera and continue his secretary’s incarceration in the city jail. Satisfied that the state would have no objections to this, the Governor ordered Joseph McKean to enter a *nolle prosequi* in the Mayor’s Court proceedings.  

The ambiguity that at times crept into the correspondence between Yrujo and McKean, respecting which of Cabrera’s “immunities” were being waived at any given time and which were being retained, also found its way into the statements of Cabrera’s legal counsel. Acting on the advice of Samson Levy, a prominent Philadelphia attorney, Cabrera had written President Jefferson on October 3 seeking federal help in having his complete diplomatic immunity recognized, thus “exempting [him] from the cognizances of all tribunals.” Having proclaimed himself “exempted from the ordinary jurisdiction of the Country,” Cabrera unabashedly sought the President’s aid in securing from a federal court a writ of *habeas corpus*. Whatever his reaction to this seeming inconsistency, Jefferson routinely passed the letter on to Secretary of State James Madison. Jefferson and Madison, because of developments in Washington, were already exasperated with Yrujo and doubtless saw in Cabrera’s maneuver an opportunity to embarrass the volatile Spanish Minister.

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10 The Cabrera letter to Jefferson has not been located but its substance and, indeed, its specific language can be discovered through a variety of sources. See, for instance, Jacob Wagner to Cabrera, Oct. 4, 1804; James Madison to Cabrera, Oct. 17, 1804, in *Domestic Letters of the Dept. of State, 1784-1906, XIV, 385, 393-394, National Archives Microfilm 40*, roll 12. Levy’s name is often spelled Sampson, but he himself always signed it Samson.

11 For Yrujo’s quarrels with Jefferson and Madison, both of a social and diplomatic nature, see Irving Brant, *James Madison: Secretary of State, 1800-1809* (Indianapolis, 1953), 163-168, 195-198, 200-212, 284, 289, 291; Dumas Malone, *Jefferson the President: The First Term, 1801-1805* (Boston, 1970), 322-323, 334, 339, 343-346. It should be noted, too, that on the very day that Cabrera wrote to Jefferson and Madison, Yrujo sent a message to Madison complaining bitterly about remarks in William Jackson’s *Political Register* that he deemed “highly injurious” to himself. Yrujo sought some response from the Department of State against this type of “libel.” See Yrujo to Madison, Oct. 3, 1804, Notes from the Spanish Legation in the United States to the Dept. of State, 1790-1906, II, National Archives Microfilm 59, roll 3.
"So far as the diplomatic quality, which is made the support of this privilege, has been conferred by the envoy of Spain," Madison wrote Cabrera on October 17, "its attributes must be claimed only through him." However, if Cabrera had been "invested by his catholic majesty directly with a public character, exempting you from the cognizance of our tribunals," Madison would do all in his power to have Cabrera released. He urged the Spaniard to forward to the State Department evidence of his alleged diplomatic immunity.

Not content solely with marshaling the evidence requested by Madison, on January 11 Cabrera sent a remonstrance to the Speaker of the United States House of Representatives complaining that, though he was "in the ministry plenipotentiary of my master the King of Spain," he had been "treated as if possessing no other rights than those of a citizen of this [the American] republic." He charged that his home had been entered illegally by Sheriff Barker, his personal rights violated, and he had been summarily hauled off to prison and put "under the authority of an American gaolkeeper." All this, according to Cabrera, despite Governor McKean's awareness that the entire procedure was patently illegal. Whether or not Yrujo had agreed with McKean to remove his immunity, Cabrera told the House, "the Governor of Pennsylvania ought to know that, the minister plenipotentiary of his catholic majesty, far from giving his consent for the imprisonment of a member of his legation, should prevent it. . . ." He quoted at length several authorities, among them Grotius, Wiquefort, and Vattel, to the effect that "there does not, nor cannot exist a single case in which common civil justice can exercise any jurisdiction on those protected by the law of nations." The remonstrance was read to the full House on January 17 and tabled.

Cabrera's remonstrance to the House elicited no public notice in Pennsylvania. Yet his efforts were not without results. Following an examination of the documentation provided by Cabrera, Madison directed Alexander James Dallas, the United States district attorney for the Eastern District of Pennsylvania, "to take the most advisable

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12 James Madison to Cabrera, Oct. 17, 1804. See Aurora, Apr. 30, 1805, and footnote 10. I wish to thank Professor Robert Rutland for providing me with a copy of Madison's letter.

means for bringing [Cabrera’s] claims of exemption from the cognizance of our laws to a judicial decision in the most summary manner.” Dallas accordingly arranged to have Cabrera appear before Justices Bushrod Washington and Richard Peters in the April Sessions of the United States circuit court.14

Even before Cabrera launched his campaign to gain federal support for his cause, McKean, increasingly uncomfortable with the delay in proceedings, badgered Yrujo for word of the King’s pleasure. Nonetheless, it was not until April 16 that Yrujo (having finally heard from the Spanish foreign minister, Don Pedro Cevallos) could report that his government wished state authorities to determine informally if Cabrera were guilty or not. Should the state investigation establish his guilt, the King would propose “a solution.” McKean quickly dismissed the idea of any such arrangement. As chief justice of Pennsylvania’s Supreme Court in 1784 he had worked assiduously in the Marbois-Longchamps case to reject a similar proposal from the French government, maintaining that it was destructive to the independence of the state court. He was no less sensitive to the court’s independence in 1805.15

While McKean considered his next step, the federal circuit court met on April 19 to hear Cabrera’s motion for a writ of habeas corpus. Samson Levy argued Cabrera’s plea on two levels. First, Cabrera was innocent. But even if his client were guilty, Levy told the court, no state tribunal had jurisdiction over him in light of his diplomatic position. Therefore, the federal court could, and should, grant the desired writ and free him of his unwarranted confinement now eight months in duration. Levy offered a number of documents, including one from Don Pedro Cevallos dated September 19, 1803,


stating that "local officials such as governors, intendants, mayors and other justices ought to respect [Cabrera's] privileges."16

For the state, Dallas and Joseph McKean maintained that Cabrera was not being confined at the instigation of Pennsylvania authorities, but rather at the request of his own Minister. They argued that Pennsylvania had scrupulously honored Cabrera's immunities and those of the Spanish legation. It was only at the specific behest of the Spanish Minister himself that the state had consented to confine the prisoner temporarily. No state charges had been lodged against the defendant, except during that brief period when the prisoner had withdrawn his own immunities. They asserted that the federal court could not interfere in the matter; it had no jurisdiction over the case. Jared Ingersoll appeared briefly in the interest of the Bank of Pennsylvania, telling the justices that representatives of the bank had never formally brought charges against Cabrera for his part in the illegal transactions and had no intention of doing so. They therefore had "no interest whatever" in the court's ruling in the matter of the writ.17

In the end, Justice Peters swept aside Levy's arguments and denied the circuit court's jurisdiction to grant the writ. Cabrera began a passionate harangue against the court and proclaimed himself free. He threatened to "defend [his] privileges at the expense of [his] life." To no avail. He was rushed back to his apartment.18

The decision of the circuit court proved a Pyrrhic victory for the McKean administration. Among those deeply moved by Cabrera's

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16 Poulsor's American Daily Advertiser, Apr. 23, 1805. Cevallos' note seemed to refer only to Spanish "governors, intendants, mayors and other justices."

17 Cabrera obviously believed that the bank had brought formal charges against him. For his efforts to clarify where the charges, if any, originated, see Cabrera to Samuel M. Fox, Mar. 27, 1805; Cabrera to McKean, Mar. 28, 1805, Aurora, Apr. 24, 1805. He got no response from McKean. For evidence that the bank would have willingly pressed charges had it received the least encouragement from either McKean or Yrujo, see Fox to McKean, Sept. 3, 1804, Aurora, May 22, 1805.

18 Several local newspapers carried Poulsor's account of the hearing, but Alexander James Dallas made no mention of it in his Reports of Cases Ruled and Adjudged in the Several Courts of the United States and Pennsylvania ... (Philadelphia, 1807), IV (the April Session is covered on pp. 391-401). Yrujo reported to McKean on April 16, that an attempt had been "made of late" by Cabrera to take his case to state Chief Justice Edward Shippen. According to Yrujo that attempt had been "suddenly suspended" and removed before Frederick Wolbert, Associate Judge of the Court of Common Pleas. I have been unable to verify Yrujo's statement.
plight was William Duane who first learned the details of the Spaniard's legal difficulties from Poulson's *American Daily Advertiser* on April 23. Persuaded that Cabrera was being unjustly held under McKean's orders and that Yrujo was "treating Cabrera like one of his servants" rather than as a protected member of his legation, the editor of the *Aurora* moved to provide the public with additional details. With characteristic dispatch and resourcefulness, Duane secured and reprinted, on the same day that Poulson's report appeared, evidence put forth at the trial by Levy in Cabrera's behalf. In the days that followed Duane published a series of letters, documents, and editorials supporting Cabrera's claims.

Duane's obvious enthusiasm for providing the public with materials supplied by Levy and Cabrera soon elicited criticism from the *United States Gazette* and *Reelf's Philadelphia Gazette*. Both ran columns alleging that materials in the *Aurora* sympathetic to Cabrera contained "numerous mistakes, intentionally or accidentally committed..." These errors, it was asserted, altered "the true meaning and intention of the original expression," and placed Cabrera in the most favorable light. The correspondent in the *Philadelphia Gazette* laid the blame for the distortion on Cabrera himself, hinting that the letters supplied to Duane (and their translations) were more testimony to Cabrera's artfulness than to his innocence. "Cabrera may go on amusing people with the publication of mutilated facts and incorrect statements," he wrote, but little heed would be paid him. He concluded with the observation that "the business in question cannot or should not be a subject of discussion in a newspaper."

Duane would have none of that. Day after day he lashed out at those responsible for Cabrera's legal difficulties. When his attacks persisted into the third week of May, McKean and Yrujo sought to defend their own conduct by arranging to have their letters and those of Samuel M. Fox published without comment in *Reelf's Philadelphia Gazette* and in Francis Bailey's *Freeman's Journal*. Duane's response to their move was to reprint the letters in his

19 *Aurora*, Apr. 23, 1805. The hearing began on Friday, September 19, and concluded on Monday, the 22nd.
own paper along with additional materials and editorial comments favorable to Cabrera. Throughout the remainder of May and into June he maintained a steady stream of vitriol against McKean and those associated with him and opened the columns of the *Aurora* to persons similarly inclined. Duane’s efforts guaranteed that few literate adults in Philadelphia would remain totally ignorant of the events surrounding Cabrera’s prolonged confinement.22

The Cabrera proceedings were a fortuitous development for Duane who in the spring of 1805 was anxious to undermine McKean’s bid for a third gubernatorial term. Indeed, he was looking for an opportunity to break openly with the man he had supported since 1799, and he quickly perceived in the Cabrera proceedings the culmination of many of the trends that had slowly nurtured his disenchantment with McKean and the wing of the Republican Party most ardently supporting him.

Strains between Duane and McKean had long existed, of course. McKean’s attitude toward the press, his willingness, even eagerness, as the state’s chief justice to place editors under bonds for good behavior, and to initiate libel proceedings against those critical of his behavior on the bench or of his court was well known to Duane even before McKean’s election to the governorship. Duane had also favored someone other than McKean as the Republican gubernatorial candidate in 1799 in light of what he perceived to be McKean’s unresponsiveness to the party’s more democratic elements. Still, he had campaigned effectively, even brilliantly, in McKean’s behalf once McKean became the party’s standard bearer. He had sustained that support even in the face of an assault upon himself by the governor’s son.23

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22 *Ibid.*, May 22, 23, 1805. Duane indicated that the *Freeman’s Journal* also published the material but I have been unable to locate that particular edition of the *Journal*. “Tyro” (*Aurora*, Apr. 30, 1805) reported that the Cabrera case “is become within a few days the topic of the city.”

Despite little public recognition of the fact, Duane had sought to reduce McKean's role in state politics as early as 1802. The Governor's unwillingness to wield his substantial patronage powers in favor of Duane and his friends to the degree that Duane thought he should lay at the heart of the publisher's strategem. Along with his friend and political crony, Michael Leib, Duane proposed that McKean be encouraged to seek the vice-presidency of the United States. When that failed, they fostered criticism of McKean by giving credence to rumors that he wished to challenge Jefferson as the party's presidential aspirant in 1804. Throughout 1803 and 1804, Duane watched with growing dismay McKean's steady opposition to legal and constitutional reforms advocated by the "democrats" within the Republican Party. Duane was also unhappy with the attempts by some moderate Republicans after 1803 to secure McKean's position through a third-party movement predicated on courting Federalist support. But prior to April 1805 Duane kept his public criticisms of the Governor restrained and circumspect.

The gloves came off in April 1805. During a March 21 discussion with several legislators, McKean criticized John Stewart who, in a local newspaper, had attacked the legal profession in the course of warmly advocating a convention to amend the state Constitution. Desirous of diverting the attention of the legislators from the subject of patronage (in large part because of his opposition to their candidates), McKean alluded to the Stewart article, remarking, "I suppose we shall have him and other such clodpoles of the same pernicious sentiments returned as delegates to the projected convention! Can such men be qualified to . . . form systems of government for so great a state as Pennsylvania!" He went on to ask, "Shall a set of Clodpoles, and ignoramuses overthrow [the state Constitution]? . . . No. . . . I will firmly resist."

24 For the various machinations in these schemes, consult my Thomas McKean: The Shaping of an American Republicanism, 347-349.

25 Significantly, when in early April the New York Morning Chronicle compared McKean to Aaron Burr, the Aurora responded with restraint: "The difference in their circumstances," Duane wrote, "is that Mr. Burr lost his popularity by his own treachery, Mr. McKean is losing the estimation of the republicans of this state through the treachery of his advisors." Aurora, Apr. 3, 1805.

26 For McKean's correspondence regarding this incident, see The Address of the Society of Constitutional Republicans . . . To the Republicans of Pennsylvania (Philadelphia, 1805), esp. 23-38.
The *Aurora* reported the incident in terms guaranteed to damage the Governor in the eyes of “true republicans.” McKean had shown his true colors in this instance, the *Aurora* claimed; he looked upon common citizens as clodpoles, he dismissed their legitimate aspirations with his excessive vetoes and denigrated their worth by vile epithets. It surprised no one that Duane supported the move by some Republicans in early April to back Simon Snyder as the party’s gubernatorial candidate in the forthcoming elections. The “clodpole incident” marked the beginning of the *Aurora’s ad hominem* attacks upon McKean, but it was the Cabrera case which furnished Duane with the most naked illustrations of McKean’s perfidy and which revealed the full range of opportunities open to him in his opposition to the Governor.

Duane’s commitment to legal and judicial reforms, his distrust of alwyers, his frustrations over the power of the state executive, and his disappointment in McKean’s patronage policies, all found a responsive chord in the Cabrera proceedings. The forces obstructing Cabrera’s efforts to remain free seemed to Duane to be the same forces responsible for his own frustrations and what he deemed to be the frustrations of the state’s “true republicans.” Duane came to believe that what was at stake was not merely Cabrera’s guilt or innocence or, for that matter, the question of the role the law of nations was to play in Pennsylvania law. At stake was the very life-style of the community, the direction of republican society in Pennsylvania. It was this sense of crisis that he sought to share with his readers after April 1805.

Nothing was more striking about the Cabrera developments for Duane than the arbitrary and capricious role played by the Governor. Here in pristine form one could witness the corruption of executive powers that had become the hallmark of McKean’s administration. According to Duane, McKean as Governor had permitted Cabrera’s imprisonment without formally filed charges. He had pliantly acceded to a foreign minister’s request to confine a subordinate despite that subordinate’s protestations that he was a protected member of a foreign legation. Duane pointed out that no American statute legitimized the use of state power and facilities

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27 An anonymous correspondent first mentioned the incident on March 29, but see also *Aurora*, Apr. 17, June 3, Sept. 6, 1805; and *The Address of the Members of the General Assembly . . . recommending a New Candidate for the Office of Governor . . . Apr. 3, 1805* (n.p., n.d.).
by foreign ministers for their own purposes. McKean had also acquiesced in Cabrera's lengthy confinement though no federal or state statute recognized his power to do so. His studied disallowance of due process in the Cabrera matter, Duane argued, was typical of the governor's growing propensity to wield his executive might against the will of the people. Under McKean, the *Aurora* insisted, arbitrary rule had returned to Pennsylvania. "It is a serious truth," the *Aurora* reported, "that Thomas McKean has sent back more bills with objections, than any governor of Pennsylvania since the Revolution."\(^{28}\)

"You look to the constitution of this state for the power which the governor has exercised," an anonymous correspondent in the *Aurora* (in all probability, Duane himself) wrote, "but you have forgotten that there exists a paramount to this. . . . I mean the common law of sovereigns. . . . The United Kingdoms belong to George the third, so does Pennsylvania belong to Thomas the first." "The Governor is the law of nations," he concluded, "and the law of nations is the governor."\(^{29}\)

The Cabrera hearing also spurred Duane's first open attack upon McKean's nepotism. Without the active support of those around him, Duane assured the public, the Governor's powers and authority would be greatly diminished. The Governor had not been content merely to surround himself with sycophants; he had encircled himself with members of his own family. "In England," Duane wrote, "everything is transacted in the name of the King, and for his benefit and that of his family, and so it is here. . . . One son is attorney-general, good Lord! another is private secretary—one relation is secretary of the commonwealth, good Heaven! another an auctioneer, and another provided for at the public expense—all this is exactly in order and corresponds to the example of our mother country."\(^{30}\)

Nowhere, according to Duane, were the injurious ramifications of

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\(^{28}\)*Aurora*, Apr. 17, 27, 1805.

\(^{29}\)*Ibid.*, Apr. 27, 1805.

\(^{30}\)*Ibid.*. Those referred to by Duane included Joseph McKean (Attorney General), Thomas McKean, Jr. (personal secretary), Thomas McKean Thompson, a nephew (Secretary of the Commonwealth), Robert McKean (auctioneer for the city of Philadelphia), and Andrew Pettit (a city post).
McKean's "royal family" more pronounced than in the Cabrera case. "The people of Pennsylvania are remarkably fortunate," he noted, tongue in cheek, "for instead of one, they have many governors . . . son Joe is the appointing governor, and a foreign Don is the pardon-granting governor." Duane ironically maintained that McKean had appointed to the "station of public prosecutor and preserver of the peace and laws, a man, who had, in a manner scarcely without example in times of peace violated the laws of the state, and the peace of society, by an attempt to assassinate in open day" a man who had done much to "elevate Thomas McKean to the chair of state." More crucially, perhaps, according to Duane, throughout the entire Cabrera developments that man, Joseph McKean, remained obsequious to his father rather than to his own appreciation of state and federal laws.

But for Duane Joseph McKean's sins were not limited to his failings as Attorney General, nor Yrujo's to his treatment of Cabrera. Both recently had been prime agents in creating a third party comprised of dissident Republicans and Federalists in an effort to perpetuate the reign of "the royal family" for three more years. The attempt by the Attorney General and the Spanish Minister to foster an alliance with the Federalists and "other Monarchists," according to Duane, had repercussions far beyond the Cabrera case. It indicated how obviously the present administration was repudiating the Republican Party's commitment to the common people. "The administration of Mr. McKean," Duane wrote, "has in fact afforded a most instructive lesson, upon popular government—it has proved that the further removed power is from the people, the stronger temptation to the ambitious, usurpation, and tyranny of the officers." Accordingly, McKean had begun to join the Federalists in "calling the people geese and clod-hoppers." The Aurora reported that McKean was fond of observing that "an honest poor man is a phenomenon very rarely to be met with."

31 Ibid., May 30, June 8, Aug. 2, 1805. On June 8 Duane wrote in ibid.: "During the reign of terror, young McKean, now the attorney general, was not less a distinguished terrorist than an errant paltroon" who "attacked Mr. Duane, knocked him down, beat him while prostrate on the pavement until he was senseless, and when to all appearances dead, kicked and maimed him with all the joy and cruelty of a Nero."

32 Ibid., May 11, June 1, 22, July 8, Aug. 23, Sept. 6, 1805.
Duane now insisted that the Governor had assumed "the mantle of democracy" to "gull the unsuspecting people until [he] could once be securely seated in office." "Philocles" used the columns of the *Aurora* to remind the public that McKean "has stood before you, in a public capacity, now nearly six years. You have had an opportunity of knowing his principles. They are evidently aristocratic—selfish, overbearing and intolerant...you know his notions of government, they are arbitrary...." The Cabrera case, then, was no aberration, Duane insisted; it was typical of McKean's entire second administration. McKean was no longer "a friend of the people"; he had become "the head of a faction."33

That Cabrera could find no protection in the law did not surprise Duane; neither could the people of Pennsylvania, he contended. He pointed out that the laws and procedures governing the people of the state were largely unsuitable for a republican government. The laws and proceedings—most of which, Duane stressed, continued to be drawn from English precedents—more often than not served to confuse and pervert issues rather than to clarify or solve them. It was instructive, he thought, that Cabrera had great difficulty determining the origins of the "charges" against him. It was equally instructive that McKean had relied exclusively upon "foreign influence" and "foreign precedents" to justify his behavior in the case.34 Duane challenged the people of the state to support those intent on legal reforms. He concurred with "Codrus," Jesse Higgins, and others who advocated simpler, more just laws and legal proceedings. Until such reforms were instigated the people of Pennsylvania would continue to be burdened by slow, expensive, and "unrepublican" judicial and legal procedures, Duane warned.35

The Cabrera hearing did more than spur Duane to renewed attacks upon the law; it reinforced his contempt of lawyers. A spate of articles shrilly denouncing lawyers appeared in the pages of the *Aurora* following April 22. The roles played by Ingersoll,

33 *Ibid.*, May 20, June 1, 22, 1805.
34 See Cabrera to Samuel M. Fox, Mar. 27, 1805; Cabrera to McKean, Mar. 28, 1805, *ibid.*, Apr. 24, Sept. 6, 1805, *ibid.*
Dallas, Joseph McKean and Samson Levy merely confirmed Duane’s already monumental suspicions regarding the craft’s duplicity. In 1802 he had written that “the present age is as much in danger from lawyers as the three last have been the victims of priests.” Duane considered the American Revolution to be unfinished, for though Americans had “destroyed the established monarch, aristocracy, and hierarchy of England,” they permitted lawyers to be “the only remaining ancient imposture.” Indeed, he argued, Pennsylvania continued to have “a government of lawyers.” He told Tench Coxe that “there is just dread of the lawyers in a cause of great injustice to those who are at law,” and publicly labeled the Governor “a bigotted lawyer.” He remained convinced that had Joseph McKean found himself on the other side of the Cabrera case, he would easily have found substantial legal reasons to justify Cabrera’s release. The state should be rid of such calculating advocates, he urged.

But even as Duane educated the public on the background and ramifications of Cabrera’s appearance before Justices Washington and Peters, and used that occasion to comment more broadly on the failings of McKean and his administration, the course of Cabrera’s case changed dramatically. Throughout the hearing and after, Yrujo had maintained that neither the United States circuit court nor the United States Congress—nor, for that matter, “any other American institution”—had jurisdiction over Cabrera’s fate. But, abruptly on May 10, he changed his tune. Having heard from Cevallos that his government now acceded to the state’s wishes to try Cabrera before its courts, Yrujo wrote McKean that “properly authorized by the King, my master, I do give up to the laws of this country, the person of Don Joseph de Cabrera.”

Joseph McKean again set into motion the proceedings in the Mayor’s Court. Cabrera was reindicted for forgery and scheduled for trial in the June Sessions, 1805. The trial lasted for twenty-two hours; the testimony alone “was voluminous and detailed, and occupied about twelve hours.” The weather was excessively hot and

36 Aurora, Feb. 1, Apr. 17, 27, May 13, June 18, July 27, Sept. 6, 1805; Higginbotham, Keystone in the Democratic Arch, 79–80; Duane to Tench Coxe, Feb. 14, 1803, Tench Coxe Papers, HSP.

37 Yrujo to McKean, May 4, 10, Relf’s Philadelphia Gazette, May 23, 1805.
“the hall very much crowded.” Cabrera was now represented by Thomas Heatley and the legendary William Lewis whose “discourses were . . . animated.” Despite the efforts of Heatley and Lewis, however, Cabrera was found guilty and sentenced on July 11 to two years hard labor and fined $2,000.

Duane thought the verdict just. He observed that “the circumstances, manner, and event of his trial” were “honourable to the court and jury and cannot fail to impress his country with highly favourable sentiments of the impartial integrity of American tribunals.” The Aurora had suspected Cabrera’s guilt all along, Duane told his readers, but that had not been the crucial issue. The issue was due process for Cabrera and the Governor’s refusal to grant it. The Aurora reminded its readers that “the common law is a system of precedents—and it is immaterial to the lawyer whether the case which he adopts as a precedent was founded in an arbitrary and unlimited perpetration of wrong, whether the result of malice or revenge or intoxication. . . .” If the Governor’s actions regarding Cabrera had gone unnoticed and unresisted in the press, an evil precedent might have been established.38

Conceding that Cabrera’s lawyers had served him well in this instance, Duane nonetheless lashed out at the legal profession for its role in the entire affair. He judged the lawyers, “the very oracles of law and the idolators of the constitution,” to have been “in utter contempt and violation of both” in the present case. Had the Governor and his son been on the other side of the case “as lawyers,” Duane was sure they would have been able to “show cause” why the case should have been handled differently. Duane cited a similar British case in 1768 and observed caustically that, amazingly, American lawyers, who scarcely “acknowledge that justice can be administered unless the word British is attached to it,” had seen fit in this instance to remain blissfully ignorant of British precedents. He asked rather pointedly if Joseph McKean would have pursued the same course had he been a British attorney general.39

The issue would not die. Less than two weeks after Cabrera’s

38 Mayor’s Court Dockets, 1802–1808, p. 250, City Archives, Philadelphia; Aurora, July 20, 22, 23, 1805.
39 Aurora, July 23, 1805.
conviction in the Mayor's Court, McKean directed that in accordance with Yrujo's wishes Cabrera would be excused from hard labor and from being fed and clothed according to jail regulations. He would serve his time and pay his fine but he could receive supplies from friends and whatever clothes he wished. Paul Cox, a local democrat and chairman of the Board of Inspectors for the jail, publicly challenged McKean's powers to affect such a partial pardon. Duane seconded Cox's criticisms. Both maintained that McKean was "modifying" Cabrera's sentence and thus usurping the prerogatives of the judiciary. The Aurora saw in McKean's move "one of the grossest violations of the law, that has ever been attempted in this state."

In the days that followed Duane enlarged upon his criticisms of McKean's directive regarding Cabrera's fate. The issue was no longer merely a legal or constitutional matter, Duane railed; it had become a matter of "public morals and national character." Unless a stop was put to McKean's assault upon the state's Constitution, the very existence of Pennsylvania's republicanism was in jeopardy. McKean was clearly placing the common law above the state Constitution. Duane wrote ominously that the state law had invested the inspectors of the prison "with authorities which the executive authority cannot infringe without incurring the penalty of a high crime and misdemeanor. From impeachments under the present constitution it is presumed there is no apprehension."

Never one to be intimidated by threats, even thinly veiled threats of impeachment, McKean granted Cabrera a full pardon after the Spaniard made restitution to the bank for its losses. There the American phase of the matter ended for the unhappy Cabrera.

But not for Duane and McKean. Prior to the October 1805 elections, Duane reviewed McKean's record for the voters of the state. He averred categorically that McKean's dealings with Cabrera violated state law and in fact constituted a high crime against the people of Pennsylvania. None too subtly he reminded the public

40 Paul Cox to McKean, July 22, 1805, Aurora, July 27, 1805; see also Ibid., July 28, 29, 30, 1805. The court record (Mayor's Court Dockets, 1802-1808, p. 250) shows that Cabrera was "to be fed and clothed as the Law directs."
41 Aurora, July 27, 28, Sept. 6, 1805.
42 Ibid., July 27, 1805.
that the recourse available to them in such circumstances was impeach-ment. He assumed, of course, that his systematic criticism of the Governor would lead not to impeachment but to McKean's electoral defeat. McKean's victory in 1805 encouraged Duane to look to a more radical solution for ending McKean's "reign." 

Undoubtedly Duane would have enthusiastically resisted McKean's hopes for a third gubernatorial term even had the Cabrera case not arisen. But whether his opposition to the Governor would have been as personal and as violent, or whether he would have acquiesced in the later impeachment schemes as whole-heartedly as he did without the Cabrera developments is doubtful. The Cabrera case galvanized Duane's opposition to McKean and did much to shape his unsuccessful strategy against him in the fall elections of 1805. Equally significant, the implacable hatred each held for the other after 1805, their unwillingness to compromise their differences in the interest of party harmony, and the frenzied misrepresenta-
tions and distortions that each attributed to the other throughout 1806 and 1807 had their origins largely in the particulars of the Cabrera case. If in the end the case provided only a fraction of the ammunition marshaled by Duane, and others, in the effort to impeach McKean, clearly it furnished much of the inspiration.

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44 The Cabrera case encouraged Duane to launch attacks on McKean's "unconstitutional" and "unrepublican" acts. By associating McKean in the public eye with those forces in Pennsylvania society aligning against radical legal and constitutional reforms, and the constitutional convention proposed by John Steele and others to accomplish both, Duane hoped to destroy McKean. He learned too late that by tying McKean closely to the question of constitutional changes he weakened his case. The Lancaster Journal (see esp. the August and September editions) was just one newspaper which quickly realized that McKean's best bet to survive the election in 1805 was to convince the populace that a vote against him was a vote against the current state Constitution and a vote for the convention which McKean and his supporters argued was a leap into the unknown. By the time Duane recognized the wisdom of concentrating his attacks on McKean's personal failings, it was too late.

45 "Report of the Committee appointed to Inquire into the Official Conduct of the Governor of Pennsylvania," in Journal of the House, 1807-1808, 324-429, esp. 326. McKean sought to ruin Duane by initiating libel proceedings against him. Duane was ultimately found guilty on one of the two counts. Horace Binney, ed., Reports of Cases Adjudged in the Supreme Court of Pennsylvania (Philadelphia, 1890-1891), I, 600-609.